

FINAL
TESTIMONY OF
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ASSISTANT ADMINISTRATOR
NATIONAL MARINE FISHERIES SERVICE
U.S. DEPARTMENT OF COMMERCE
ON
THE MAGNUSON-STEVENSON
FISHERY CONSERVATION AND MANAGEMENT ACT

BEFORE MEMBERS OF THE
SENATE SUBCOMMITTEE ON OCEANS AND FISHERIES
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
PORTLAND, ME FIELD HEARING

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Madame Chair and members of the Subcommittee, thank you for inviting me to Portland to testify on implementation and reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to speak on issues of concern to New England fishermen. I am Penny Dalton, Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

Building a Foundation for Sustainable Fisheries -- New England

As you know, the fisheries off New England shores are a valuable national resource. In 1998, New England commercial fisheries harvested close to 595 million pounds of fish, producing almost \$540 million in dockside revenues. While the seafood industry makes a substantial contribution to the Northeastern economy, current harvest levels are a fraction of the estimated long-term potential yields from these fisheries. We at NOAA Fisheries are working to rebuild to New England's fish stocks so that eventually they could sustainably support a billion dollar industry. Consider the following-- five years ago, the news about groundfish stocks was grim. Spawning stocks of cod were at dangerously depressed levels and recruitment was at a record low for the third year. Yellowtail flounder populations on Georges Bank were reduced to historical lows. Gulf of Maine haddock was declared commercially extinct. From the fisherman's perspective, times are rough for nearly everyone. Some traditional fishing grounds on Georges Bank have been closed year-round for five years now, and days-at sea were cut in half.

Yet these management measures are starting to pay off, and we are beginning to see signs of a recovery. Stock assessments released July 30 by the National Marine Fisheries Service indicate there is some good news for many stocks-- not necessarily that there are a lot more fish of harvestable size, but that the mortality caused by fishing is lower, or that the fish left in the water are getting larger. In a few cases, there actually has been recruitment success -- for instance, there are large numbers of young fish coming into the haddock stock. The 1998 year class is the

largest in the past 20 years. One Cape Cod fisherman told a NOAA Fisheries scientist that 1999 haddock harvests by the Cape hook fleet were the best in 30 years.

The situation has also improved for Georges Bank cod, where the stock biomass has increased 43 percent above the record low 1995 levels. Yellowtail flounder is improving, with growing populations and decreased fishing mortality for stocks off Georges Bank, Southern New England and Cape Cod. In addition, witch flounder is well on its way to recovery — we've seen good recruitment and a doubling of spawning stock biomass since 1995.

Sea scallops have grown in size and number in areas closed to fishing to protect groundfish spawning. This summer, scallopers were able to return to a closed area off of Georges Bank, in what may be the beginning of a "crop-rotation" management strategy. This opening put as much as \$40 million into Southeast New England fishing communities — benefits directly attributable to conservation from the closures. Benefits to scallop stocks from closing portions of Georges Bank appear to be so significant that we may not have to impose additional reductions on days-at-sea scheduled for the scallop fleet this year.

Despite these positive signs, for other fish stocks we are still in the early stages of our transition to sustainable fisheries. The Gulf of Maine cod situation remains particularly troubling. Fishing effort has been reduced, but cod mortality is still two or three times what it needs to be to promote a recovery. For cod populations on both Gulf of Maine and Georges Bank, recruitment remains a problem. We have not had a good cod year class in many years.

While realizing that some stocks have a long way to go, we can be cautiously optimistic. We must protect the gains some fish stocks have made, focus on improving yields over the long-term, and identify additional measures that would move depleted stocks toward recovery. It is clear that fish management can work. When we reduce mortality, biomass increases and at some point, when nature cooperates, good year classes enter the fishery. However, we must remain cautious as we face the challenges before us. We must maintain management plans that work, adjust our course where plans are not effective, and minimize to the extent possible the impacts on communities and the fishing industry as we make the transition to sustainable fisheries. I appreciate the commitment of members of the Northeast delegation and New England fishing communities to this transition. I look forward with you to restored fish stocks that support a vibrant fishing industry and healthy coastal economies that once were a New England tradition.

Building a Foundation for Sustainable Fisheries -- The National Outlook

As we approach the close of the 20th Century, we are at a crucial point in fisheries management, with considerable work ahead of us. In the 23 years since the enactment of the Magnuson-Stevens Act, we have seen the complete Americanization of fisheries in federal waters, the expansion of the U.S. fishing industry, declines in many fishery resources, and the rise of public interest in fisheries issues. We have seen some successes from our management actions, including the initial rebound of a few depleted stocks like Georges Bank haddock, the rebuilding of Atlantic king mackerel, and the continued strong production of fish stocks off Alaska. However, 12 percent of U.S. living marine resources are overfished or are approaching overfished, 24 percent are not overfished, and there is another 64 percent whose status is

unknown. And in New England, the percentage of overfished stocks in 1998 was approximately 40 percent. Yet, recovery is certainly possible as we know from recent successes in the Georges Bank scallop fishery. Scientists estimate that we could increase U.S. fishery landings by up to 3 million metric tons by rebuilding fisheries and harvesting them at long-term potential yields.

The Magnuson-Stevens Act, of course, provides the national framework for conserving and managing the wealth of fishery resources found within the 197-mile-wide zone of Federal waters contiguous to the United States. Over the years, it has changed and evolved through several reauthorizations. In 1996, Congress ushered in a new era in fisheries management, making significant revisions to the Magnuson-Stevens Act in the Sustainable Fisheries Act (SFA). The SFA addresses a number of conservation issues. First, to prevent overfishing and rebuild depleted fisheries, the SFA caps fishery harvests at the maximum sustainable level and requires fishery management plans to rebuild any overfished fishery. NOAA Fisheries now reports annually on the health of marine fisheries and identifies fisheries that are overfished or approaching an overfished condition. Second, the SFA refocused fisheries management by emphasizing the need to protect fisheries habitat. To enhance this goal, the SFA requires that management plans identify habitat that is necessary to fish for spawning, feeding or growth. The new law also clarifies our existing authority to comment on Federal actions that affect essential fish habitat. Third, to reduce bycatch and waste, the SFA adds a new national standard requiring that conservation and management measures minimize bycatch and the mortality of bycatch that cannot be avoided. It also calls for management plans to assess bycatch and to take steps to reduce it.

The new conservation requirements may have far-reaching effects on recreational and commercial fishing and on fishermen, their families and communities in New England and elsewhere around the country. To address this concern, the SFA establishes a new national standard 8 that requires, consistent with conservation objectives, that fishery management plans ensure sustained participation of fishing communities and minimize adverse impacts. In addition, a national standard has been added on promoting the safety of human life at sea. Finally, the SFA provides a number of new tools for addressing problems relating to the transition to sustainable fisheries, including amendments to provide for fisheries disaster relief, fishing capacity reduction programs, vessel financing, and grants and other financial assistance.

Implementation of the Sustainable Fisheries Act

NOAA Fisheries takes seriously its new mandates under the SFA. We are continuing to work to ensure that SFA requirements are implemented, and that conservation and management measures fully protect the resource and provide for the needs of fishing communities and the Nation. A great deal of work remains to be done. We are laying a better foundation for future fisheries management, yet the benefits of the changes made by Congress in 1996 will take years, perhaps decades, to realize. In addition, the management decisions that we face are becoming ever more complex and contentious, and good solutions are hard to come by. We need to direct resources and effort to the scientific and technical aspects of our work. We also must build consensus with the public and among various stakeholders to facilitate progress in developing management programs that will move us toward the goal of healthy and sustainable marine resources.

The SFA imposed a deadline of October 11, 1998 for amendments to each of the 39 existing

fishery management plans to implement its changes. Despite the Councils' best efforts, there were some proposed amendments that did not satisfy the requirements, for which the analyses were inadequate, or that did not minimize socioeconomic or environmental impacts to the extent possible and achieve management objectives. NOAA Fisheries disapproved or partially approved those amendments and is working closely with the Councils to improve them, particularly in the areas of assessing social and economic impacts, rebuilding overfished stocks, minimizing bycatch, identifying and protecting fish habitat, and improving the scientific basis for management. I will outline some of the work we are doing in each of these areas:

Social and economic analysis One of NOAA Fisheries' highest priorities is to improve our social and economic analyses. These analyses are required by a number of laws in addition to the Magnuson-Stevens Act, including the Regulatory Flexibility Act, the National Environmental Policy Act (NEPA), and Executive Order 12866. The requirement of the Magnuson-Stevens Act to include a fishery impact statement, and the new standard on fishing communities, also make clear our mandate to consider the social and economic impacts of any management program. This consistently has been an important part of the decision-making process and has affected our choice of fisheries conservation and management actions. For instance, here in New England, the New England Council and NOAA Fisheries decided to phase in the days-at-sea program over two years instead of one in the Northeast multispecies fishery, because of concerns that fishermen could not weather such a sudden decrease in effort. Similarly, the fishery management regulations that curtail the monkfish fishery, will be implemented incrementally to end overfishing over three years to delay their economic impact. Further delays in ending overfishing, however, would threaten the ability to rebuild monkfish within the statutory 10 year period.

To strengthen our social and economic analysis capabilities, we will issue revised Regulatory Flexibility Act guidelines to our employees at the end of the year, hire more economists, and work with other Federal agencies and states to improve our data collection. As a result, economic, social, and biological considerations will be better integrated to assist fisheries managers in making the best possible decisions to balance conservation, the fishing industry, and community needs.

Rebuilding overfished stocks NOAA Fisheries is committed to ending overfishing and rebuilding stocks. This has proven to be a very difficult task, in part because of the complex biological structure of fisheries and complicated calculations of maximum sustainable yield, and other fishery parameters. However, initial signs of recovery have been observed for some New England fish stocks under rebuilding programs begun before the SFA was enacted. For example, the adult stock biomass of Georges Bank haddock has increased fourfold since early 1993, and favorable recruitment is forecast to continue. Georges Bank cod populations also have grown, despite unfavorable recruitment. These trends show that recovery measures can work, and the effects of those measures can be observed quickly.

Turning to the management of wide-ranging Atlantic fish like tunas and billfish, NOAA Fisheries has taken the lead in preparing management plans and rebuilding programs. This past April, NOAA Fisheries completed a fishery management plan for Atlantic tunas, swordfish and sharks (HMS Plan) and an amendment to the billfish fishery management plan (Billfish Amendment) that contained rebuilding programs. Numerous and substantial changes were incorporated in the final

rule to implement the HMS Plan and Billfish Amendment, based on the thousands of public comments received by the agency. Advisory Panels established under the SFA and composed of representatives of commercial and recreational fishing interests and other knowledgeable individuals, including members of the ICCAT Advisory Committee, participated in the development of the management measures. The final rule became effective July 1, 1999. In addition, we are working hard to complete restrictions on the use of spotter planes. We do face serious legal challenges, however, and lost an important case last year. Recently, we responded to concerns from purse seiners in the BFT fishery and removed the cap.

Essential Fish Habitat One significant change that resulted from passage of the SFA is the increased emphasis of the Magnuson-Stevens Act on conserving and enhancing essential fish habitat (EFH). Here in New England, EFH was designated for the 18 species managed by the New England Council, a number of species managed by the Mid-Atlantic and South Atlantic Councils that range into New England waters, and some highly migratory species in the Gulf of Maine and southern New England that are managed directly by NOAA Fisheries. EFH was identified for each individual species and life stage using the information available to the Councils and generally constitutes about 60 percent of the geographic range of each managed species in New England. While the area covered by all the designations together is quite broad, this scope is unavoidable and recognizes the diverse habitats of a wide variety of federally managed species.

Within an EFH, we can focus on a subarea called a “habitat area of particular concern.” For example, on Georges Bank, the New England Council did an excellent job of using available scientific information to identify a relatively small area that is extremely important refuge habitat for juvenile cod, as well as other species. When portions of the closed area on Georges Bank were re-opened to scallop fishing this summer, the area of particular concern was excluded and remained closed to protect the habitat. Such areas do not always require restrictions on fishing, but we must carefully examine potential threats, and in some cases management measures may be necessary to avoid adverse impacts.

The EFH provisions of the Magnuson-Stevens Act also help address threats from non-fishing activities. NOAA Fisheries has conducted over 1,900 consultations to date with Federal agencies whose actions may adversely affect EFH. Over 600 of those consultations have been in the northeastern states and about 40 here in Maine. One of our goals is to integrate EFH consultations into existing environmental review processes (such as Environmental Impact Statements) as a way to minimize regulatory impacts on federal action agencies and the public. We expect the number of consultations to increase as outreach efforts with Federal agencies continue to build awareness of the EFH statutory requirements.

Bycatch reduction Minimizing bycatch continues to be a very high priority for NOAA Fisheries, and we are working closely with industry to develop new gear, and to promote clean fishing practices in all the fishing sectors. For instance, vessels participating in the New England Sea Scallop Exemption Program (Exemption Program), which allows scallop vessels to fish in an area closed to protect groundfish on Georges Bank, are required to use a twine top with a minimum mesh size of 10 inches. Furthermore, effective December 16, 1999, vessels fishing under the sea scallop effort-control program outside of the Exemption Program area will be subject to a minimum 8- inch twine top requirement. This increase from the current 5.5-inch requirement is expected to produce significant reductions of certain bycatch species, especially

flatfish. In addition, the Exemption Program fishery will be closed when a certain percentage of yellowtail flounder is caught, ensuring that the program will not jeopardize the yellowtail rebuilding schedule.

Improving technical and scientific information and analyses NOAA Fisheries is committed to using the best possible science in the decision-making process, and to incorporating biological, social, and economic research findings into fisheries conservation and management measures. Meeting our responsibilities under the Magnuson-Stevens Act and other applicable laws requires collection of a considerable amount of data. We will continue to support a precautionary approach in the face of scientific uncertainty. At the same time, we are expanding our own collection efforts and our partnerships with the states, interstate commissions, industry and others to collect and analyze critical data. In January of this year, NOAA Fisheries delivered a Report to Congress entitled *Proposed Implementation of a Fishing Vessel Registration and Fisheries Information System* that calls for innovative state-federal partnerships to improve the quality and quantity of information for marine resource stewardship. Such federal-state partnerships are an important mechanism for sharing resources and reducing duplicative efforts.

Reauthorization Issues

We are still working to understand and effectively implement the changes to fishery management policies and procedures made by the SFA. Consequently, we would not propose major changes to the Magnuson-Stevens Act at this time. However, we have established an internal agency task force to evaluate SFA implementation, and the group has identified some revisions of existing provisions that may be useful to make the management process more efficient and to resolve some relatively minor problems. We currently are reviewing various issues raised by the task force, the Councils, and some of our stakeholders. Among the issues identified are the following:

Review process for fishery management plans, amendments and regulations The SFA attempted to simplify and tighten the approval process for management plans and regulations. However, one result of that effort has been two distinct review and implementation processes -- one for plans and amendments and another for implementing regulations. This essentially uncouples the review of plans and amendments from the process for regulations, and as a result, the decision to approve or disapprove a plan or amendment may be necessary before the end of the public comment period on the implementing regulations. We are considering amendments that would modify the process to address this issue.

In addition, the Committee may wish to consider reinstating the initial review of fishery management plans and amendments by the Secretary. Considerable energy and staff resources are expended on plans or amendments that are ultimately disapproved because of serious omissions and other problems. At present, two to three months must elapse before the Secretary makes his determination, and if the amendment is then disapproved, it can be months or longer before the Council can modify and resubmit the plan or amendment. While the initial review was eliminated by the SFA to shorten the review process, it actually may provide a mechanism to shorten the time it takes to get a plan or amendment approved and implemented.

Restrictions on data collection and confidentiality The Magnuson-Stevens Act currently

restricts the collection of economic data from processors. Removal of this restriction could improve the quantity and quality of information available to meet the requirements of the laws requiring social and economic analysis. In addition, the SFA changed the term “statistics” to “information” in the provisions dealing with data confidentiality. The change has raised questions about the intended application of those provisions, particularly with respect to observer information, and Congressional clarification would be useful.

Coral reef protection Special management areas, including those designated to protect coral reefs, hard bottoms, and precious corals, are important commercial resources and valuable habitats for many species. Currently, we have the authority to regulate anchoring and other activities of fishing vessels that affect fish habitat. Threats to those resources from non-fishing vessels remain outside agency authority except when associated with a Federal action that would trigger EFH consultation or where addressed in regulations associated with a national marine sanctuary. We suggest amending the Act to clarify, consolidate, and strengthen NOAA Fisheries’ authority to regulate the actions of any recreational or commercial vessel that is directly impacting resources being managed under the Magnuson-Stevens Act.

Caribbean Council jurisdiction The current description of the Caribbean Council limits its jurisdiction to Federal waters off Puerto Rico and the U.S. Virgin Islands. As a result, the Council cannot develop FMPs governing fishing in Federal waters around Navassa Island or any other U.S. possession in the Caribbean. Jurisdiction of the Caribbean Council could be expanded to cover Navassa Island, by including “commonwealths, territories, and possessions of the United States” within the description of that Council’s authority.

Council meeting notification To meet the notification requirements of the Magnuson-Stevens Act, Councils spend tens of thousands of dollars a year to publish meeting notices in local newspapers in major and/or affected fishing ports in the region. By contrast, fax networks, mailings, public service announcements, and notices included with marine weather forecasts are much less expensive and could be more effective in reaching fishery participants and stakeholders. The Committee may wish to consider modifying notification requirements to allow Council use of any means that will result in wide publicity.

We look forward to working with Congressional members on high-priority policy issues such as observer programs, individual fishing quotas, and funding and fee authorities, although, at this time, we have no specific recommendations for changes in the Act to address these issues. We will continue to work closely with the Northeast delegation, New England Council and our stakeholders to resolve problems affecting New England fisheries.

Madame Chair, this concludes my testimony. Thank you for the opportunity to discuss the implementation and reauthorization of the Magnuson-Stevens Act. I am prepared to respond to any questions you and members of the audience may have.

